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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIAPOSTED ON WEBSITE
NOT FOR PUBLICATIONUNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

| | | |
|----------------------|---|-------------------------|
| In re: |) | Case No. 05-91456-D-7 |
| |) | |
| ANTONIO MENDONCA and |) | |
| MARIA MENDONCA, |) | |
| |) | |
| Debtors. |) | |
| |) | |
| MICHAEL McGRANAHAN |) | Adv. Pro. No. 06-9018-D |
| as trustee, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| A.L. GILBERT CO., |) | Date: January 29, 2007 |
| |) | Time: 10:30 a.m. |
| Defendant. |) | Dept: D |

MEMORANDUM DECISION

This memorandum decision is not approved for publication and may not be cited except when relevant under the doctrine of law of the case or the rules of claim preclusion or issue preclusion.

The parties to this adversary proceeding have filed an Agreed Statement of Facts and have briefed the legal issues. The court has heard the parties' arguments at the date and time indicated above, and the matter was submitted. For the reasons set forth below, judgment will be entered in favor of defendant A.L. Gilbert Company ("the Defendant").

I. BACKGROUND

The record in the above-captioned bankruptcy case indicates that on July 15, 2005, Antonio and Maria Mendonca, doing business as Antonio Maria Mendonca Dairy (collectively, the "Debtors"),

1 filed a joint voluntary petition for relief under chapter 7 of —
2 the Bankruptcy Code. Michael McGranahan (the "Trustee") was
3 appointed and continues to serve as the trustee for the Debtors'
4 chapter 7 case.

5 The Debtors' schedules indicate that before they filed their
6 chapter 7 petition, they owned dairy cattle and operated a dairy.
7 As noted below, during the course of the case the Trustee has
8 collected proceeds from the sale of milk products that had been
9 produced by the Debtors' dairy.

10 On May 11, 2006, the Trustee initiated the above-captioned
11 adversary proceeding against the Defendant. The Defendant
12 answered the Trustee's complaint on June 8, 2006.

13 In his Complaint, the Trustee seeks under 11 U.S.C. § 544(a)
14 to avoid a statutory lien in favor of the Defendant, on the
15 grounds that such lien was unperfected as of the date the Debtors
16 filed their bankruptcy petition. On the same grounds, he also
17 seeks to avoid this lien pursuant to 11 U.S.C. § 545(2).

18 This court has jurisdiction under 28 U.S.C. § 1334(b). This
19 is a core proceeding under 28 U.S.C. § 157(b)(2)(K) and (O), in
20 which the court may make its own findings of fact and conclusions
21 of law. This memorandum decision constitutes the court's
22 findings of fact and conclusions of law under Federal Rule of
23 Civil Procedure 52, as incorporated by Federal Rule of Bankruptcy
24 Procedure 7052.

25 II. FACTS

26 On January 19, 2007, the parties filed an Agreed Statement
27 of Facts. The following material facts agreed by the parties are
28 hereby adopted by the court:

1 1. As of the commencement of the Debtors' case, they owed
2 the Defendant the sum of \$85,425.19 for providing feed and
3 materials to the Debtors for use in their dairy operation, as
4 evidenced by the Defendant's proof of claim filed September 6,
5 2005 (Clerk's Claim No. 8).

6 2. The Defendant supplied feed and materials to the
7 Debtors during the forty-five day period before the Debtors'
8 bankruptcy petition was filed, in the total amount of \$25,972.95.

9 3. The available funds from the pre-petition and post-
10 petition sale of the Debtors' milk products, which the Trustee
11 has collected and which are subject to the Defendant's lien
12 claim, total \$25,549.88.

13 4. The Defendant filed certain UCC-1 financing statements
14 with the California Secretary of State's office as follows: (a)
15 Doc. No. 0415360111 on May 19, 2004, and (b) Doc. No. 0417560935
16 on June 16, 2004 (collectively, the "Statements"); both of the
17 Statements state that the Defendant is entitled to a statutory
18 Dairy Supply lien in the Debtors' milk products and proceeds
19 therefrom.

20 The parties further agreed, and the court finds, that the
21 Statements include, in Section 3, the Defendant's corporate name,
22 but that the name is typewritten rather than hand-signed by a
23 representative of the Defendant.

24 In their respective trial briefs, the parties concur that
25 should the Statements be materially defective under applicable
26 law, the Defendant's lien would be unperfected and therefore
27 subject to avoidance under both actions stated by the Trustee in
28 his Complaint. The Trustee argues that the Defendant's failure

1 in the Statements to provide hand-written signatures of a
2 representative of the Defendant is just such a defect. The
3 Defendant argues that the Statements are sufficient under
4 applicable law and therefore insulate its claimed lien from
5 attack by the Trustee based on a lack of perfection.

6 III. ANALYSIS

7 In 1987, the California legislature added chapter 11, known
8 as the Dairy Cattle Supply Lien law ("Lien Law"), to the Food and
9 Agricultural Code.¹ 1987 Cal. Stats. ch. 679. The Lien Law
10 provides for a statutory lien, known as a Dairy Cattle Supply
11 Lien ("Dairy Lien"), in favor of those who provide feed or
12 materials to aid in the raising or maintaining of dairy cattle.
13 Cal. Food & Ag. Code § 57402 (West 2001). The amount that can be
14 secured by a Dairy Lien is limited to "an amount equal to the
15 reasonable or agreed charges for feed or material provided within
16 a 45-day period." Id.

17 The Lien Law creates a specific scheme for the creation and
18 perfection of Dairy Liens. A lien created under the Lien Law
19 "shall be perfected and shall be effective upon the filing of a
20 notice of claim of lien with the Secretary of State pursuant to
21 all provisions of this section." Id. § 57405. The Lien Law
22 provides a list of specific requirements for the form and filing
23 of the notice of claim of lien. One such requirement is that the
24 notice "shall be signed by the lien claimant or by a person
25 authorized to sign documents of a similar kind on behalf of the
26 claimant." Id. § 57405(c). The Lien Law also provides that the

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28 1. Chapter 11 is codified in the California Food & Agricultural
Code at §§ 57401 - 57414.

1 notice must be filed on the standard financing statement form
2 under the Commercial Code, but with three specific changes to be
3 made to such form. Id. § 57405(d). One such change in the form
4 of financing statement is that "[t]he form shall be signed by the
5 lien claimant and need not be signed by the debtor." Id. §
6 57405(d)(2).

7 In addition to these specific requirements, the Lien Law
8 provides more generally that "except to the extent specifically
9 set forth in this chapter, the lien created by this chapter shall
10 be subject to Division 9 . . . of the Commercial Code." Id. §
11 57407.

12 The Trustee argues that the typewritten name of the
13 Defendant is a material defect in the Statements, which makes
14 them insufficient to perfect the Defendant's claim of lien under
15 the Lien Law, because the typewritten name on the Statements is
16 not a signing as contemplated by the statute. The Trustee
17 further argues that the plain meaning of the Lien Law requires
18 hand-written signatures on the Statements. At oral argument, the
19 Trustee's counsel also argued that the Lien Law, because it
20 provides for a statutory rather than consensual lien, must be
21 construed to require written signatures, to minimize the
22 potential risk for fraudulent lien claims.

23 The Defendant argues that § 57407 of the Food and
24 Agricultural Code effectively eliminates the requirement for any
25 signature on the Statements, because it operates to impose the
26 formal requirements of the Commercial Code for the form of
27 notices of lien under the Lien Law and the Commercial Code does
28 not require a debtor's or secured party's signature to be

1 provided thereon. Alternatively, the Defendant argues that even
2 if a signature is required to perfect its Diary Lien, the
3 typewritten name appearing on the Statements satisfies applicable
4 law.

5 The Lien Law does not expressly define how a notice of lien
6 is to be "signed." The issue, then, in light of the lack of a
7 statutory definition, is whether the Defendant's typewritten name
8 on the Statements is to be considered a "signing" (i.e. its
9 "signature").

10 "The starting point for interpreting a statute is the
11 language of the statute itself." Consumer Prod. Safety Comm'n v.
12 GTE Sylvania, Inc., 447 U.S. 102, 108 (1980). The Supreme Court
13 has instructed that the "plain meaning of legislation should be
14 conclusive, except in the 'rare cases [in which] the literal
15 application of the statute will produce a result demonstrably at
16 odds with the intentions of its drafters'." United States v. Ron
17 Pair Enters., Inc., 489 U.S. 235, 242 (1989) (citations omitted).
18 Where "plain meaning" yields results that are not absurd, the
19 inquiry ends there, without need to probe legislative history.
20 See Lamie v. U.S. Trustee, 540 U.S. 526, 534-36 (2004) ("awkward,
21 and ungrammatical" language in 11 U.S.C. § 327 not ambiguous, and
22 plain meaning of words applied).

23 Here, for two reasons, the statutory language dictates that
24 the Defendant's typewritten name on each of the Statements was
25 sufficient to perfect the Defendant's lien. First, the plain
26 meaning of "to sign" includes acts other than the hand-writing of
27 a name. To sign means "to affix a signature to" or "to approve
28 or ratify (a document) by affixing a signature or seal."

1 Webster's II Collegiate Dictionary 1051 (3d. ed. 2005). A
2 "signature" is a "distinctive mark, characteristic, modus
3 operandi, or sound effect indicating identity" as well as "the
4 name of one as written by oneself." Id. A prominent law
5 dictionary defines "signature" in the commercial context as
6 "[a]ny name, mark, or writing used with the intention of
7 authenticating a document." Black's Law Dictionary (8th ed.
8 2004). Based on these common meanings of "to sign" and
9 "signature," the court concludes that the typewritten name of
10 Defendant on the Statements satisfied the Lien Law's requirement
11 that they be "signed" by the Defendant.

12 Second, the Lien Law provides that Diary Liens are "subject
13 to Division 9" of the Commercial Code, to the extent not
14 "specifically set forth" in the Lien Law. Cal. Food & Ag. Code §
15 57407 (West 2001). A definition of "to sign," an act required by
16 § 57405(d), is not "specifically set forth" in the Lien Law. The
17 court therefore can look to Division 9 of the Commercial Code for
18 the definitions of these terms.

19 Before July 1, 2001 (the effective date of comprehensive
20 changes to Division 9), § 9402(1) of the Commercial Code
21 expressly required the debtor's signature on a financing
22 statement. In various cases, courts did not construe this
23 requirement to mean that a corporate debtor must provide a
24 handwritten signature of a corporate officer on financing
25 statements. See In re Sport Shack, 383 F. Supp. 37, 41 (N.D.
26 Cal. 1974) (hand-written name of corporate debtor sufficient and
27 signature of corporate officer not required); In re Save-On
28 Carpets of Ariz., Inc., 545 F.2d 1239, 1240-41 (9th Cir. 1976)

1 (typed name of corporate debtor sufficient under Arizona version
2 of U.C.C. § 9-402(1)).

3 Although the Defendant invites the court to read the
4 signature requirement out of the Lien Law altogether, the court
5 cannot do so here in light of the language in § 57405(d)(2)
6 requiring, as a specific change to the form of the financing
7 statement, that the form "be signed by the lien claimant." But,
8 given the directive in § 57407, the court will look to Division 9
9 for guidance as to the meaning of the term "signed."

10 As noted above, cases decided before changes were made to
11 Division 9 indicate that a hand-written signature was not
12 required on financing statements under § 9402(1) of the
13 Commercial Code. The current version of the Commercial Code
14 takes the principle further. It requires only an
15 "authentication" of various records such as a financing
16 statement, and the act of "authentication" is defined to include
17 not just "to sign" a document, but also "to execute or otherwise
18 adopt a symbol . . . with the present intent of the
19 authenticating person to identify the person and adopt or accept
20 a record." Cal. Comm. Code § 9102(a)(7)(A), (B).² It is thus
21 clear that the Statements would satisfy the "authentication"
22 requirement under the current Division Nine, further supporting
23 the Defendant's contention that the Statements are not materially
24 defective due to the use of the Defendant's typewritten name

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26
27 2. Further, under the general definitions provided in § 1201 of
28 the Commercial Code, "signed" is defined expansively "[to] include[]
using any symbol executed or adopted with the present intention to
adopt or accept a writing." Cal. Comm. Code § 1201(38) (West 2006).

1 rather than the hand-signed name of the Defendant's
2 representative.

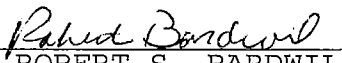
3 The Trustee also argues that a hand-written signature should
4 be required under the Lien Law, which provides for a statutory
5 rather than consensual lien as under Division Nine, in order to
6 reduce the risk of fraud. The court is not convinced that such a
7 requirement would significantly reduce such risk, and, in any
8 event, the court is not to look to general policy reasons for an
9 interpretation of the statute where the plain language is clear.

10 For the reasons stated above and based on the facts in this
11 case, the court concludes that the Dairy Lien in favor of the
12 Defendant was perfected as of the date the Debtors filed their
13 bankruptcy petition. This insulates the Defendant's Dairy Lien
14 from attack by the Trustee under 11 U.S.C. § 544(a) and 11 U.S.C.
15 § 545(2).

16 III. CONCLUSION

17 For the reasons set forth above, the court concludes that
18 the typewritten signatures on the Statements were sufficient to
19 satisfy § 57405(d)(2) of the Food and Agricultural Code, and that
20 the Defendant's claimed Dairy Lien was perfected as of the date
21 the Debtors filed their chapter 7 petition. Accordingly, the
22 relief requested by the Trustee is not available, and the court
23 will enter judgment in favor of the Defendant.

24
25 Dated: February 9, 2007


ROBERT S. BARDWIL
United States Bankruptcy Judge

CERTIFICATE OF MAILING

I, Andrea Lovgren, in the performance of my duties as assistant to the Honorable Robert S. Bardwil, mailed by ordinary mail a true copy of the attached document to each of the parties listed below:

Attorney for Plaintiff

Carl Collins
P.O. Box 3291
Modesto, CA 95353

Attorney for Defendant

Eric Nielsen
P.O. Box 3030
Modesto, CA 95350

Frederick Smith, Jr.
P.O. Box 11690
Oakdale, CA 95361

DATE: February 9, 2007


Andrea Lovgren